

The opinion in support of the decision being entered today was **not** written for publication and is **not** binding precedent of the Board.

Paper No. 16

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte AMIT GUPTA, ISRAEL CIDON  
and RAPHAEL ROM

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Appeal No. 2001-1123  
Application No. 08/990,759

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ON BRIEF

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Before THOMAS, HAIRSTON, and KRASS, Administrative Patent Judges.  
HAIRSTON, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 1 through 15, 17 and 19 through 33.

The disclosed invention relates to a method and apparatus for selectively communicating via either a connectionless protocol or a connection oriented protocol.

Claim 1 is illustrative of the claimed invention, and it reads as follows:

1. Apparatus for engaging in communications, comprising:
  - a. a communications interface; and
  - b. a processor, connected to said communications interface and configured to initiate

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communications over said communications interface using a connectionless protocol and to selectively complete a communications exchange using the connectionless protocol or to switch to a connection oriented protocol depending upon a response received over said communications interface.

The references relied on by the examiner are:

Motoyama	5,909,493	June 1, 1999 (filed Oct. 16, 1996)
Shimokawa	5,919,250	July 6, 1999 (filed May 10, 1996)

Claims 1, 3, 4, 8, 10 through 15, 19 through 22, 24 through 27, 29 and 32 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Motoyama.

Claims 2, 5 through 7, 9, 17, 23, 28, 30, 31 and 33 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Motoyama in view of Shimokawa.

Reference is made to the brief (paper number 12) and the answer (paper number 13) for the respective positions of the appellants and the examiner.

#### OPINION

We have carefully considered the entire record before us, and we will sustain the 35 U.S.C. § 102(e) rejection of claims 1, 3, 4, 8, 10 through 12, 15, 19, 20, 22, 24, 25, 27, 29 and 32, and the 35 U.S.C. § 103(a) rejection of claims 2, 5 through 7, 9 and 30. On the other hand, we will reverse the 35 U.S.C. § 102(e) rejection of claims 13, 14, 21 and 26, and the 35 U.S.C. § 103(a) rejection of claims 17, 23, 28, 31 and 33.

Motoyama uses either a connectionless mode of communication or a connection mode of communication to monitor the operation of a machine (e.g., a copier). The connection mode of

communication is used when the connectionless mode of communication is not suitable for a detected condition of the copier (column 8, line 58 through column 9, line 20). Appellants have not challenged the examiner's finding (answer, pages 3 and 4) that a communications interface and a processor connected thereto are disclosed by Motoyama. Appellants' arguments (brief, pages 4 and 5) that Motoyama is concerned with reducing overhead and network interactions and is event driven are without merit since the first alternative mode of communication (i.e., connectionless) of claim 1 reads directly on the teachings of Motoyama. A finding of anticipation can be made by reading one of the claimed alternatives on the teachings of the applied reference. Stated differently, the examiner is not required to read the second alternative mode of communication (i.e., connection oriented protocol) of claim 1 on the teachings of Motoyama. Thus, the anticipation rejection of claim 1 is sustained. The anticipation rejection of claims 3 and 4 is sustained because appellants have chosen (brief, page 5) to let these claims stand or fall with claim 1.

For all of the reasons expressed supra for claims 1, 3 and 4, the anticipation rejection of claims 8, 10 through 12<sup>1</sup>, 15, 19, 20, 22, 24, 25, 27, 29 and 32 is sustained.

The obviousness rejection of claim 2 is sustained because appellants have not presented any patentability arguments for this claim (brief, page 10).

The 35 U.S.C. § 103(a) rejection of claim 5 is sustained because we agree with the examiner's finding (answer, pages 6 and 7) that it would have been obvious to one of ordinary skill

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<sup>1</sup> Motoyama refers to the claimed "single packet" as a "single unit" (column 4, lines 61 through 66).

in the art to use the well-known connectionless user datagram protocol (UDP) as taught by Shimokawa as the connectionless protocol disclosed by Motoyama. In Motoyama, the available connectionless protocol (e.g., UDP) would be used if another one is not available when initiating an information transfer over the communications interface.

The obviousness rejection of claim 6 is sustained because appellants have not presented any patentability arguments for this claim (brief, page 11).

The obviousness rejection of claim 7 is sustained because as indicated supra, Motoyama teaches that the connection oriented protocol should be used when the connectionless protocol is not appropriate for the type of information that is to be transmitted to a diagnostic station.

The obviousness rejection of claim 9 is sustained because appellants have not presented any patentability arguments for this claim (brief, page 11).

The obviousness rejection of claim 30 is sustained because Motoyama teaches the first alternative of this claim as indicated supra.

The anticipation rejection of claims 13, 14, 21 and 26 is reversed because Motoyama does not teach “simultaneously” storing “state information needed for a connection using Transaction TCP (T/TCP).”

The obviousness rejection of claims 17, 23, 28 and 33 is reversed because the applied references neither teach nor would have suggested to one of ordinary skill in the art the use of a cache in connection with the connectionless protocol information.

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The obviousness rejection of claim 31 is reversed because the applied references neither teach nor would have suggested to one of ordinary skill in the art “substantially simultaneously storing state information needed for a connection using Transaction TCP (T/TCP).”

#### DECISION

The anticipation rejection made by the examiner is affirmed as to claims 1, 3, 4, 8, 10 through 12, 15, 19, 20, 22, 24, 25, 27, 29 and 32, and is reversed as to claims 13, 14, 21 and 26. The obviousness rejection made by the examiner is affirmed as to claims 2, 5 through 7, 9 and 30, and is reversed as to claims 17, 23, 28, 31 and 33. Accordingly, the decision of the examiner is affirmed-in-part.

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No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

AFFIRMED-IN-PART

JAMES D. THOMAS  
Administrative Patent Judge

KENNETH W. HAIRSTON  
Administrative Patent Judge

ERROL A. KRASS  
Administrative Patent Judge

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